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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

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8 MICHAEL RAY WHEELER,

Case No. 3:12-cv-00469-MMD-WGC

9 Petitioner,

ORDER

10 v.

11 JAMES COX, *et al.*,

12 Respondents.

13 This Court granted in part respondents' motion to dismiss Michael Ray Wheeler's  
14 *pro se* 28 U.S.C. § 2254 habeas petition (ECF No. 55). The Court determined that the  
15 petition contained both exhausted and unexhausted claims. The Court directed Wheeler  
16 to make a "*Rhines* election," that is, to choose from the following options:

17 1. Submit a sworn declaration voluntarily abandoning the  
18 unexhausted claims in his federal habeas petition, and proceed only on the  
exhausted claims;

19 2. Return to state court to exhaust his unexhausted claims, in  
20 which case his federal habeas petition will be denied without prejudice; or

21 3. File a motion asking this court to stay and abey his exhausted  
22 federal habeas claims while he returns to state court to exhaust his  
unexhausted claims.

23 *See Rhines v. Weber*, 544 U.S. 269, 276, (2005). Petitioner was expressly advised that  
24 his failure to file a motion for stay or seek other appropriate relief from this court within  
25 thirty days would result in his federal habeas petition being dismissed. The order was  
26 served on petitioner at his address of record.<sup>1</sup>

27 <sup>1</sup>Petitioner is not in custody of the State of Nevada. He had confirmed his address  
28 of record shortly before the order issued granting in part the motion to dismiss (see ECF  
No. 54).


1 More than the allotted time of thirty days has passed, and petitioner has failed to  
2 respond to this Court's order in any way.

3 It is therefore ordered that the petition is dismissed with prejudice for petitioner's  
4 failure to respond to this Court's order.

5 It is further ordered that, to the extent that it is applicable in this procedural context,  
6 a certificate of appealability is denied.

7 It is further ordered that the Clerk enter judgment and close this case.

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9 DATED THIS 3<sup>rd</sup> day of November 2017.

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12 MIRANDA DU  
13 UNITED STATES DISTRICT JUDGE  
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